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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Policies and Rules Implementing  
the Telephone Disclosure and Dispute  
Resolution Act

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CC Docket No. 93-22  
RM-7990

COMMENTS OF AMALGAMATED MEGACORP

Amalgamated MegaCorp ("AMC"), by its attorneys, hereby submits these comments on the Commission's Notice of Proposed Rulemaking and Notice of Inquiry, FCC 93-87, released February 11, 1993 in the captioned proceeding ("Notice"). The Notice solicits public comment on the Commission's proposals for rules implementing the Telephone Disclosure and Dispute Resolution Act of 1992, P.L. No. 102-556 ("TDDRA" or "the Act") respecting "pay-per-call" telecommunications services.

**SUMMARY**

The Commission's proposals range from designation of pay-per-call telephone numbers to forgiveness of unlawful pay-per-call charges. AMC, a diversified firm with investments in a variety of products and services, including communications, will focus its comments on four key issues raised by the Notice.

First, in establishing definitions of "pay-per-call" services and other central terms, the Commission should coordinate and harmonize its regulations with those adopted by the Federal Trade Commission ("FTC") in the parallel TDDRA rulemaking conducted by that agency. Thus, the Commission should enhance its regulations by including the same definition of "presubscription or com-

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parable arrangement" proposed by the FTC and by making clear that debit cards are within the scope of this exclusion for pre-existing account relationships.

Second, the Commission should answer in the affirmative the question of whether telephone calling cards are "credit or charge cards" that are exempt from classification as "pay-per-call" services under TDDRA. Telephone calling cards are a means of charging telephone services and are based on a pre-existing contractual arrangement between the card issuer and its customer. Thus, both the language of the Act and its underlying purpose of preventing consumer exploitation on automatically billed calls support classifying calling cards as "credit or charge cards."

Third, the Commission should not impose a blanket prohibition on all forms of carrier billing for collect pay-per-call services. Although complaints have been received on collect services in the recent past, Congress outlawed specific forms

~~of collect pay-per-call services and carrier billing that should provide such~~

## DISCUSSION

Fraudulent and abusive practices by many unscrupulous pay-per-call operators motivated Congress last year to enact strict informational disclosure and consumer protection standards for pay-per-call services. While Congress desired to stamp out vehicles for misleading consumers, it also sought to preserve the emerging pay-per-call industry as a source of convenient and useful audio information services for American consumers, finding that "[m]any pay-per-call businesses provide valuable information, increase consumer choices and stimulate innovative and responsive services that benefit the public." TDDRA § 1(b)(2).

The FCC must balance these two objectives—preventing consumer

rights provisions, has proposed a specific definition of the term "presubscription or comparable arrangement" in TDDRA § 228(i). Section 308.2(e) of the FTC's proposed rules states:

Presubscription or comparable arrangement means a contractual arrangement established prior to the initiation of a pay-per-call service between a provider of a pay-per-call service and a consumer. No action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating such a contractual agreement.

See Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 58 Fed. Reg. 13370, 13385 (March 10, 1993).

The Commission should incorporate this definition into its pay-per-call rules. The term is absolutely crucial to proper enforcement of TDDRA, because communications services billed to such pre-existing accounts are not considered "pay-per-call" services. Small providers and investors such as AMC have a legitimate need for predictability and certainty in the application of TDDRA and its im-

## B. Telephone Calling Cards

Under TDDRA, although "pay-per-call" services may not be offered via "800" numbers, carriers may provide 800 services for which a consumer is charged only after "disclos[ing] a credit or charge card number during the call." 47 U.S.C. § 228(6)(C). Similarly, the Act excludes from the definition of "pay-per-call" services audio information or entertainment services for which the consumer is not charged merely "on the basis of the completion of the call." TDDRA § 101, 47 U.S.C. § 228(i). These statutory terms demonstrate a clear legislative purpose that the consumer protection safeguards of the Act should apply to all audio information services where the consumer does not affirmatively provide billing information but instead is charged automatically upon calling the service itself.

The Commission's Notice seeks comment on whether telephone calling cards should be deemed "credit or charge cards" for the purposes of the TDDRA exclusion. Notice, ¶ 30. Including telephone calling cards would be entirely consistent with the Act's purpose of protecting consumers from misleading and abusive practices associated with automatically billed pay-per-call services. There are numerous types of audio information and entertainment services available today which allow consumers to charge calls to credit and charge card numbers. Such services are not subject to the same opportunities for abuse as "automatically" billed pay-per-call services because consumers are not charged until billing information is disclosed by the consumer and billing of information charges to the account is first agreed to by the customer. Consequently, where a charge account is utilized, the consumer retains the ability to disconnect the call at any time before charges are incurred, making the provisions of TDDRA requiring a specified time-period for "free" disconnection superfluous and inapplicable.

As a statutory matter, telephone calling cards are fully within the scope of the types of "credit or charge card number[s]" excluded by TDDRA. Telephone

calling cards are in fact charge accounts, permitting a user to charge telephone services to a specified account, subject to agreement to pay for the services upon receipt of a later bill from the issuing carrier or local exchange carrier ("LEC") billing agent. Like American Express and other charge cards, telephone calling card charges are due when billed, while in contrast credit cards allow consumers the additional option of paying only part of the current charges and financing the balance over time with interest. Thus, not only do telephone calling cards enable customers to make calls when they might not otherwise be able to—either because they do not have enough change to complete a call from a pay telephone or because they are not using their home telephone to make a long distance call—but are also particularly important to young persons and lower-income consumers who may not qualify for VISA, MasterCard and traditional "credit" cards.

For these statutory and public policy reasons, the Commission should implement TDDRA by expressly providing that audio information services billed to credit, charge/debit and telephone calling card accounts are not "pay-per-call services" for purposes of its proposed rules.<sup>2</sup> Businesses desiring to comply with the Commission's rule will therefore have notice in advance that the FCC does not interpret the Act to apply to audio information services billed to credit, charge and telephone calling cards. Adopting this rule would offer a clear "safe harbor" that would clarify and eliminate any uncertainty that may exist in the proposed rules. This is preferable to resolving such issues on a case-by-case basis in the future because it provides guidance to businesses in their efforts to develop new products

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<sup>2</sup> Another form of "charge" card increasingly used in today's economy is the "debit" card. Debit cards are charge cards for which the consumer pre-pays a balance, against which charges are posted and deducted. Debit cards are thus within the scope of the TDDRA-excluded "credit and charge cards," since the issuer has a pre-existing contractual arrangement with the end user/card holder. Moreover, providers of goods and services in many if not most instances cannot distinguish between credit and debit cards issued by third-party financial firms, such as VISA, as many such issuers offer both credit and debit cards, using identical numbering formats, in a manner transparent to merchants and vendors. See Comments of Amalgamated MegaCorp, at 3-6, FTC File No. R311001 (filed April 9, 1993).

and services that conform to the legal requirements of TDDRA without risk of subsequent interpretative disputes and associated legal expenses. At the same time, explicitly exempting audio information services billed to credit, charge/debit and telephone calling cards would enhance, and in no way limit, the FCC's ability to attack and prevent schemes that unethical or illegal operators might utilize to evade the protections Congress desired for "pay-per-call" customers.

**C. Prohibition on Billing of Collect Pay-Per-Call**

The Commission also seeks comment on whether to prohibit billing by the LECs for interstate collect calls that offer or initiate audiotext or simultaneous voice conversation programs. Notice, ¶ 36. The Notice does not propose such a ban on LEC billing of collect pay-per-call, but rather seeks preliminary comment on the merits of and need for such a rule.

A blanket prohibition on carrier billing for collect pay-per-call services is premature at this time. The apparent basis for the Commission's request for comment is that "numerous" complaints about collect pay-per-call services have been received in the past. *Id.*, ¶ 21 n.15. While this form of pay-per-call service appears to have been no less prone to consumer abuse than others in the recent past, TDDRA specifically addresses collect pay-per-call. In fact, Congress has outlawed one form of collect pay-per-call ("800" access services) and imposed notice and billing rules which should provide substantial consumer protections for other collect services. Rather than deprive all consumers of this convenient form of billing because of overreaching by some unscrupulous providers, the Commission should first aggressively enforce the Act and its existing rules against unlawful collect pay-per-call services.

According to the Notice, the two principal elements of consumer complaints have been that end users did not understand they were agreeing to a costly audio entertainment call or did not, in fact, authorize collect charges. *Id.* Both of

these problems are at the heart of the statutory approach to collect pay-per-call services. First, Congress has entirely banned any pay-per-call service in which a consumer is called back collect after placing a toll-free "800" call. 47 U.S.C. § 228(b)(6)(D). This ban should significantly reduce the likelihood of consumer confusion and the risk that consumers do not recognize they are agreeing to more costly information services. Second, by prohibiting "800" access, TDDRA requires that a consumer actually pay for the initial call to an information provider, eliminating a risk that end users could be deceived into believing that an entire pay-per-call transaction was free. Third, if the Commission here adopts the FTC's definition of "presubscription or comparable arrangement," discussed above in Section A, it will go far to discourage consumers from inadvertently agreeing to collect charges, as service providers could not use any action by the end user in the call itself as the basis for an asserted "pre-existing" relationship with the end user.

Accordingly, because Congress has spoken specifically to the problem of collect pay-per-call services and has limited its prohibition to "800"-based services, a Commission-initiated ban on billing for collect pay-per-call would be beyond the intent of Congress and inappropriate at this time. TDDRA requires that the Commission prohibit billing by the for any service that a carrier knows or reasonably should know has not been provided in compliance with statutory provisions governing the practices of information providers. 47 U.S.C. § 228(d)(1)(A). Thus, where an information provider violates the statute's terms, billing is already impermissible. On the other hand, a blanket prohibition on LEC billing for collect "pay-per-call" services would completely eliminate the future flexibility of firms to offer collect "pay-per-call" services that do not result in abuses. Information providers that seek to offer consumers legitimate services and utilize fair, fully disclosed billing practices should not be precluded from offering carrier-



billing options before the new restrictions imposed by Congress have been given a chance to operate.

The Act also requires other safeguards that should effectively reduce customer confusion in connection with collect pay-per-call services. First, TDDRA requires information providers to give customers the opportunity to disconnect the call before any charges are incurred. 47 U.S.C. § 201(a)(2)(B). This will enable customers to make deliberate decisions to incur the costs of audio information calls. In addition, the Act also requires that information providers preface each call with a preamble, which will provide the customer ample notice of the rates he or she is about to be charged. 47 U.S.C. § 201(a)(2)(A). This too will reduce customer confusion about rates and when those rates will apply. Finally, TDDRA and the FTC's proposed rule mandate that rate disclosures be prominent and conspicuous in all advertisements, further diminishing the risk of consumer confusion. 47 U.S.C. § 201(a)(1)(A).

All of these requirements markedly change the landscape of collect pay-per-call services. Instead of imposing a new, blanket ban on billing, the Commission should instead enforce the Act's requirements aggressively against unlawful pay-per-call operators. Based on the experience accumulated under the new statutory structure, the Commission could then determine whether the relief enacted by Congress was sufficient or whether additional steps must be taken to curb abusive collect pay-per-call practices. Acting now would be inconsistent with Congress' attempt to deal specifically with the problems of collect pay-per-call and undermine the statutory purpose of encouraging "[m]any pay-per-call businesses [which] provide valuable information, increase consumer choices and stimulate innovative and responsive services that benefit the public." TDDRA § 1(b)(2).

**D. Carrier Refunds and Forgiveness of Charges**

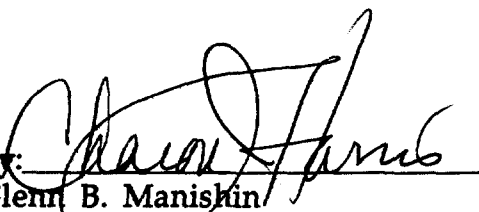
Congress was particularly concerned about billing remedies in TDDRA, and enacted significant new protections for consumers in Title II of the Act, for which the FTC has enforcement jurisdiction. With respect to this Commission, the

upon a Commission finding of violation should carriers be permitted to forgive or refund pay-per-call charges.

### CONCLUSION

Both consumers and businesses planning to offer pay-per-call services will benefit if this Commission harmonizes its rules with those of the FTC and clarifies which services are subject to the proposed pay-per-call rules. The Commission should conclude that telephone calling cards are "credit or charge cards" for the purposes of the Act, and thus a permissible billing mechanism for 800-access services. Further, the Commission should not implement a blanket prohibition on the billing of collect services, as Congress has enacted new, strict guidelines specifically applicable to collect pay-per-call services. These guidelines rectify the various abuses associated with collect "pay-per-call" services and should be sufficient to obviate the need for a wholesale ban. Finally, the Commission should not delegate to the carriers the ability to make unilateral findings of illegality for purposes of implementing the Act's provisions on refunds, in light of the significant due process problems presented by the proposal.

Respectfully submitted,

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Dated: April 19, 1993.

**EXHIBIT A**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580

In the Matter of:

Proposed Telephone Disclosure Rule

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FTC File No. R311001

COMMENTS OF AMALGAMATED MEGACORP

Amalgamated MegaCorp ("AMC"), by its attorneys, hereby submits

consumer protection standards for pay-per-call services. While Congress desired to stamp out vehicles for misleading consumers, it also sought to preserve the emerging pay-per-call industry as a source of convenient and useful audio information services for American consumers, finding that “[m]any pay-per-call businesses provide valuable information, increase consumer choices and stimulate innovative and responsive services that benefit the public.” TDDRA § 1(b)(2).

The FTC must balance these two objectives—preventing consumer

308.2(e).<sup>1</sup> The Commission's proposal to exempt contracts "created" during a pay-per-call transaction from qualifying for the exemption also appears appropriate by establishing a bright line test for defining a "prior" contractual agreement and protecting consumers from inadvertently contracting through misunderstanding or technical malfunction.

The proposed definition leaves unanswered several significant questions that the FTC should consider clarifying in advance of the rule's effective date, instead of resolving in case-by-case decisions. Most importantly, is it permissible for service providers to arrange pre-existing contracts with customers (consistent with the rule disqualifying simultaneous provision of pay-per-call services and contract creation) through voice recording or telephone keypad input of "acceptance" terms from consumers? For instance, one technically advanced method for establishing contracts with customers—used by a variety of computer bulletin board services—is for the service provider to announce its terms for service and have the consumer signify acceptance by speaking or inputting his or her name, address and telephone number. Although the rule as proposed does not appear to preclude such means of obtaining consent to service contract terms, the Commission should clarify in its Order promulgating the rule that such methods would comply with Section 308.2(e).

The Commission should also specifically address the subject of credit card, charge card and debit card billing. The Act clearly provides that audio information and entertainment (collectively "audio information") services billed to such accounts are not "pay-per-call" services because charges are not assessed merely "on

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<sup>1</sup> The Commission may consider modifying the language "prior to the initiation of a pay-per-call service" because consumers technically initiate pay-per-call "calls" or "transactions" while service providers initiate "services." In addition, the definition as phrased is slightly circular, in that the services in question are by definition not pay-per-call services, and thus the contracts are between service providers and customers, rather than between pay-per-call service providers and customers. A more accurate definition would be: "a contractual agreement established between a service provider and a consumer prior to the initiation of a call to the service by the consumer."

the basis of the completion of the call.” TDDRA § 101, 47 U.S.C. § 228(i). For instance, although “pay-per-call” services may not be offered via “800” numbers, the Act provides that carriers may provide “800” services for which a consumer is charged after “disclos[ing] a credit or charge card number during the call.” 47 U.S.C. § 228(6)(C). Thus, credit and charge card billing arrangements are not subject to prohibition on “800” pay-per-call services established in the Act, and are not within the Act’s requirement that all “pay-per-call” services be provided only within the “900” service code established by the Federal Communications Commission. *Id.* § 228(i)(1)(C).

This application of TDDRA is entirely consistent with the statute’s purpose of protecting consumers from misleading and abusive practices associated with automatically billed pay-per-call services. There are numerous types of audio information and entertainment services available today which allow consumers to charge calls to credit and charge card numbers. Such services are not subject to the same opportunities for abuse as “automatically” billed pay-per-call services because consumers are not charged until billing information is affirmatively provided. Consequently, the ability to disconnect before charges are incurred remains with the consumer at all times, making the provisions of TDDRA and the proposed FTC rules requiring a specified time-period for “free” disconnection superfluous and inapplicable.

As a practical matter, “debit” cards are the functional and legal equivalent of “credit or charge card number[s]” for purposes of these provisions. Debit cards are charge accounts for which the consumer supplies a pre-paid balance, against which charges billed to the card are deducted. In contrast to credit cards, for which the consumer contracts to pay charges billed after the transaction is made, with interest on unpaid balances, debit card transactions are posted against the current balance of the consumer’s account, with no interest assessed. In today’s



economy, debit cards are becoming increasingly common and are offered by a variety of firms in addition to banks, the traditional issuers of credit cards. For instance, most Automatic Teller Machine ("ATM") cards are debit cards, and frequently can be used to make supermarket purchases by providing the card for validation by the merchant at the point of sale. Debit cards are particularly important to young persons and lower-income consumers, who may not qualify for the credit lines necessary for VISA, MasterCard and traditional "credit" cards, but who still want the convenience of charge-card billing. Finally, providers of goods and services in many if not most instances cannot distinguish between credit and debit cards issued by third-party financial firms, such as VISA, as many such issuers offer both credit and debit cards, using identical numbering formats, in a manner transparent to merchants and vendors.

The Commission should therefore implement TDDRA by adding a definitional section expressly providing that audio information services billed to credit, charge and debit card accounts are not "pay-per-call services" for purposes of the proposed rule.<sup>2</sup> AMC suggests the following language for new Section 308.2(C)(1):

For purposes of this rule, any service providing audio information or audio entertainment, or access to simultaneous voice conversations, and any service, including the provision of a product, the charges for which are assessed only upon the disclosure by the consumer during the call of a credit, charge or debit card number, is not a pay-per-call service.

This suggested addition, drawn directly from the language of the statute, is important for a number of reasons. First, businesses desiring to comply with the Commission's rule should have notice in advance that the FTC does not

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<sup>2</sup> The Federal Communications Commission has solicited public comment on whether telephone "calling cards" are credit or charge cards for purposes of TDDRA. The FTC should therefore not address that issue in its pay-per-call rules.

interpret the Act to apply the preamble and other requirements to credit, charge and debit-card billed audio information services. Second, there are several sections of the proposed rule and the Act, for instance the provisions on disconnection of local telephone service, which have no application to credit, charge and debit-card billed audio information services. Third, in many if not most instances, credit, charge and debit-card billed audio information services are already subject to the billing and collection standards of the federal Fair Credit Billing Act ("FCBA").

Most significantly, the status of credit, charge and debit-card billed audio information services is important for application of the advertising sections of the proposed FTC rule, for instance Section 308.5(h), which precludes advertising pay-per-call services via "800" numbers. Footnote 23 of the Notice correctly states that credit cards billing for 800 calls is permissible and that such "paid" audio information services may be advertised in connection with 800 numbers. Presumably, the Commission has concluded that under TDDRA, credit, charge and debit-card billed audio information services are within the scope of the exclusion of Section 308.2(e) as "presubscription or comparable arrangements." Under the present rules, however, the status of such transactions may be ambiguous, thus deterring service providers from implementing credit and debit-card based services in light of potential regulatory uncertainty.

Adopting AMC's proposed language offers a clear "safe harbor" that would clarify and eliminate any uncertainty that may exist in the proposed rules.<sup>3</sup> This is preferable to resolving such issues on a case-by-case basis in the future because it provides guidance to businesses in their efforts to develop new products and services that conform to the legal requirements of TDDRA without risk of subsequent interpretative disputes and associated legal expenses. At the same time, as

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<sup>3</sup> Alternatively, the Commission could resolve any potential uncertainty by making clear in its Order that credit, charge and debit-card billed audio information and entertainment services are within the scope of the exclusion of Section 308.2(e) as "presubscription or comparable arrangements."

discussed in the next section, explicitly exempting credit, charge and debit-card billed audio information services would enhance, and in no way limit, the FTC's ability to attack and prevent schemes which unethical or illegal operators might utilize to evade the protections Congress desired for pay-per-call consumers.

Question 40: TDDRA charges the Commission with prohibiting practices that "evade" the rights provided by the statute to consumers. TDDRA § 201(a)(4). This responsibility appears to be the genesis of the FTC's question regarding whether additional "new" services should be included in the definition of "pay-per-call services" or whether different disclosure requirements should be developed for such services. AMC does not believe that expansion of the definition

Commission are striving to eliminate. Indeed, adopting a "safe harbor" definition